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Securities and Exchange Board of India

CIRCULAR

SEBI/HO/CFD/CMD/CIR/P/2017/004
January 5, 2017

To
All listed entities

Sir / Madam,

Sub: Guidance Note on Board Evaluation

1. The Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR") contain broad provisions on Board Evaluation i.e. evaluation of the performance of: (i) the Board as a whole, (ii) individual directors (including independent directors and Chairperson) and (iii) various Committees of the Board. The provisions also specify responsibilities of various persons / committees for conduct of such evaluation and certain disclosure requirements as a part of the listed entity's corporate governance obligations.
2. However, the concept of Board evaluation in India is at a nascent stage. It has been brought to SEBI's notice by market participants that as the number of listed entities in India is very large, many of them may not have much clarity on the process of Board Evaluation and hence, may need further guidance.
3. SEBI has studied the practices of Board evaluation prevalent among listed entities in India. An analysis has also been done of the global practices in various jurisdictions like regulatory requirements, best practices, internal versus external evaluation, disclosure requirements etc. The matter was further discussed with the industry associations, stock exchanges, market participants and international bodies and experts to obtain their views on this subject.
4. Based on the aforesaid analysis, a guidance note in this matter has been prepared in order to guide listed entities by elaborating various aspects of Board evaluation that may help them to improve the evaluation process, derive the best possible benefit and achieve the objective of the entire process.
5. The guidance note covers all major aspects of Board Evaluation including the following:
 - a. Subject of Evaluation i.e. who is to be evaluated;
 - b. Process of Evaluation including laying down of objectives and criteria to be adopted for evaluation of different persons;
 - c. Feedback to the persons being evaluated;
 - d. Action Plan based on the results of the evaluation process;
 - e. Disclosure to stakeholders on various aspects;
 - f. Frequency of Board Evaluation;
 - g. Responsibility of Board Evaluation and
 - h. Review of the entire evaluation process periodically.
6. The purpose of the Guidance Note is to educate the listed entities and their Board of Directors about various aspects involved in the Board Evaluation process and improve



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their overall performance as well as corporate governance standards to benefit all stakeholders. This would serve as a guide for listed entities and may be adopted by them as considered appropriate. Anything mentioned in the Guidance Note shall not be construed as interpretation of provisions of SEBI LODR or any other law.

7. This Circular is issued in exercise of the powers conferred under Section 11 and Section 11A of the Securities and Exchange Board of India Act, 1992 read with Regulation 101 of SEBI LODR.
8. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Issues and Listing".

Yours faithfully,

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Annex A

Guidance Note on Board Evaluation

A. Background of Board Evaluation in India

India has moved recently from a voluntary Board evaluation under Clause 49 of the Listing Agreement (SEBI) and Corporate Governance Voluntary Guidelines of MCA (2009) to a mandatory Board evaluation under Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR).

The Companies Act, 2013 and SEBI LODR provide for several mandatory provisions for Board Evaluation on who is to be evaluated, who is to evaluate such persons, disclosure requirements, etc. The main provisions of Companies Act, 2013 and SEBI LODR on Board Evaluation as applicable to listed entities is attached at **Annexure A1** and summarized as under:

1. Role of the Nomination and Remuneration Committee (NRC):
 - a. NRC shall formulate of criteria for evaluation of performance of independent directors and the board of directors.
 - b. NRC shall carry out evaluation of every director's performance.
 - c. NRC shall determine whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.
2. Role of independent directors:
 - a. In the meeting of independent directors of the company (without the attendance of non-independent directors and management), such directors shall:
 - i. review the performance of non-independent directors and the Board as a whole.
 - ii. review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors.
 - iii. assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.
 - b. The independent directors shall bring an objective view in the evaluation of the performance of board and management.
3. Evaluation of independent directors: The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.



4. Disclosure requirements:

- a. A statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors shall be included in the report by Board of Directors placed in the general meeting.
- b. The performance evaluation criteria for independent directors shall be disclosed in the section on the corporate governance of the annual report.

B. Subject of Evaluation

As required under SEBI LODR and Companies Act, the evaluation of the Board involves multiple levels:

1. Board as a whole
2. Committees of the Board
3. Individual Directors and Chairperson (including Chairperson, CEO, Independent Directors, Non-independent directors, etc.)

C. Process of Evaluation

The process of evaluation is generally elaborate, stretching across pre-evaluation, evaluation and post- evaluation processes including, inter alia, the following:

1. Identifying the objectives of evaluation:

Identifying the objectives of the evaluation is the first and a crucial step in the Board Evaluation process. Clear identification of objectives is key to streamlining the process of evaluation, analyzing the results and taking appropriate and corrective action.

The objectives may be:

- a) General objectives- Standard Objectives for all Board evaluations of the entity
- b) Specific objectives- Objectives specific to the current Board evaluation based on recent events, new issues of concern, etc.

2. Criteria of evaluation:

The criteria for evaluation under different categories depend on the role the person/group plays in the organization. For instance, the evaluation of the Chairperson may evaluate the person's leadership, coordination and steering skills, etc. which may be different from the role of other directors. The criteria for every evaluation may be decided at every level depending on the functions, responsibilities, competencies required, nature of business, etc. As per SEBI LODR, the primary responsibility of formulation of criteria lies on the NRC.

Indicative criteria that may be used for different directors/groups are:

A. Board as a whole

a. Structure of the Board:

- i. **Competency of directors:** (Different competencies may be identified as may be required for effective functioning of the entity and the Board) -Whether Board as a



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whole has directors with a proper mix of competencies to conduct its affairs effectively.

- ii. **Experience of directors:** Whether Board as a whole has directors with enough experience to conduct its affairs effectively.
- iii. **Mix of qualifications:** Whether Board as a whole has directors with a proper mix of qualifications to conduct its affairs effectively.
- iv. **Diversity in Board under various parameters:** Gender/background/competence/experience, etc. – Whether there is sufficient diversity in the Board on the aforesaid parameters.
- v. **Appointment to the Board:** Whether the process of appointment to the board of directors is clear and transparent and includes provisions to consider diversity of thought, experience, knowledge, perspective and gender in the board of directors.

b. Meetings of the Board:

- i. **Regularity of meetings:** Whether meetings are being held on a regular basis
- ii. **Frequency:**
 1. Whether the Board meets frequently
 2. Whether the frequency of such meetings is enough for the Board to undertake its duties properly
- iii. **Logistics:** Whether the logistics for the meeting is being handled properly- venue, format, timing, etc.
- iv. **Agenda:**
 1. Whether the agenda is circulated well before the meeting
 2. Whether the agenda has all relevant information to take decision on the matter
 3. Whether the agenda is up to date, regularly reviewed and involves major substantial decisions
 4. Whether the quality of agenda and Board papers is up to the mark (explains issues properly, not overly lengthy, etc.)
 5. Whether outstanding items of previous meetings are followed-up and taken up in subsequent agendas
 6. Whether the time allotted for the every item (especially substantive items) in the agenda of the meeting is sufficient for adequate discussions on the subject
 7. Whether the Board is able to finish discussion and decision on all agenda items in the meetings
 8. Whether adequate and timely inputs are taken from the Board members prior to setting of the Agenda for the meeting
 9. Whether the agenda includes adequate information on Committee's activities
- v. **Discussions and dissent:**
 1. Whether the Board discusses every issue comprehensively and depending on the importance of the subject



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2. Whether the environment of the meeting induces free-flowing free flowing discussions, healthy debate and contribution by everyone without any fear or fervour
3. Whether the discussions generally add value to the decision making
4. Whether the Board tends towards groupthink and whether critical and dissenting suggestions are welcomed
5. Whether all members actively participate in the discussions
6. Whether overall, the Board functions constructively as a team

vi. **Recording of minutes:**

1. Whether the minutes are being recorded properly- clearly, completely, accurately and consistently.
2. Whether the minutes are approved properly in accordance with set procedures.
3. Whether the minutes are timely circulated to all the Board members
4. Whether dissenting views are recorded in the minutes

vii. **Dissemination of information:**

1. Whether all the information pertaining to the meeting are disseminated to the members timely, frequently, accurately, regularly
2. Whether Board is adequately informed of material matters in between meetings

c. **Functions of the Board:**

(Functions of the Board have been specified in detail in Chapter II of SEBI LODR and Companies Act)

- i. **Role and responsibilities of the Board:** Whether the same are clearly documented E.g. Difference in roles of Chairman and CEO, Matters reserved for the Board, etc.

ii. **Strategy and performance evaluation:**

1. Whether significant time of the Board is being devoted to management of current and potential strategic issues
2. Whether various scenario planning is used to evaluate strategic risks
3. Whether the Board overall reviews and guides corporate strategy, major plans of action, risk policy, annual budgets and business plans, sets performance objectives, monitored implementation and corporate performance, and oversees major capital expenditures, acquisitions and divestments.

iii. **Governance and compliance:**

1. Whether adequate time of the Board is being devoted to analyse and examine governance and compliance issues
2. Whether the Board monitors the effectiveness of its governance practices and makes changes as needed
3. Whether the Board ensures the integrity of the entity's accounting and financial reporting systems, including the independent audit, and that appropriate



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systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

4. Whether the Board oversees the process of disclosure and communications.
5. Whether the Board evaluates and analyses the compliance certificate from the auditors / practicing company secretaries regarding compliance of conditions of corporate governance.

iv. ***Evaluation of Risks:***

1. Whether Board undertakes a review of the high risk issues impacting the organization regularly
2. In assessment of risks, whether it is ensured that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the entity to excessive risk.

v. ***Grievance redressal for Investors:***

Whether the Board regularly reviews the grievance redressal mechanism of investors, details of grievances received, disposed of and those remaining unresolved.

vi. ***Conflict of interest:***

1. Whether the Board monitors and manages potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions
2. Whether a sufficient number of non-executive members of the board of directors capable of exercising independent judgement are assigned to tasks where there is a potential for conflict of interest

vii. ***Stakeholder value and responsibility:***

1. Whether the decision making process of the Board is adequate to assess creation of stakeholder value
2. Whether the Board has mechanisms in place to communicate and engage with various stakeholders
3. Whether the Board acts on a fully informed basis, in good faith, with due diligence and care, with high ethical standards and in the best interest of the entity and the stakeholders.
4. Whether the Board treats shareholders and stakeholders fairly where decisions of the board of directors may affect different shareholder/ stakeholder groups differently.
5. Whether the Board regularly reviews the Business Responsibility Reporting / related corporate social responsibility initiatives of the entity and contribution to society, environment etc.



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- viii. **Corporate culture and values:** Whether the Board sets a corporate culture and the values by which executives throughout a group shall behave
 - ix. **Review of Board evaluation:** Whether the Board monitors and reviews the Board evaluation framework.
 - x. **Facilitation of independent directors:** Whether the Board facilitates the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors and any criticism by such directors is taken constructively.
- d. Board and management:
- i. **Evaluation of performance of the management and feedback:**
 - 1. Whether the Board evaluates and monitors management, especially the CEO regularly and fairly and provides constructive feedback and strategic guidance
 - 2. Whether the measures used are broad enough to monitor performance of the management
 - 3. Whether the management's performance is benchmarked against industry peers
 - 4. Whether remuneration of the management is in line with its performance and with industry peers
 - 5. Whether remuneration of the Board and the management is aligned with the longer term interests of the entity and its shareholders.
 - 6. Whether the Board selects, compensates, monitors and, when necessary, replaces key managerial personnel based on such evaluation.
 - 7. Whether the Board 'steps back' to assist executive management by challenging the assumptions underlying strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the entity's focus.
 - ii. **Independence of the management from the Board:** Whether the level of independence of the management from the Board is adequate
 - iii. **Access of the management to the Board and Board access to the management:** Whether the Board and the management are able to actively access each other and exchange information
 - iv. **Secretarial support:** Whether adequate secretarial and logistical support is available for conducting Board meetings
 - v. **Fund availability:** Whether sufficient funds are made available to the Board for conducting its meeting effectively, seeking expert advice E.g. Legal, accounting, etc.
 - vi. **Succession plan:** Whether an appropriate and adequate succession plan is in place and is being reviewed and overseen regularly by the Board



e. Professional development:

- i. Whether adequate induction and professional development programmes are made available to new and old directors
- ii. Whether continuing directors training is provided to ensure that the members of board of directors are kept up to date

B. Committees of the Board

- a. **Mandate and composition:** Whether the mandate, composition and working procedures of committees of the board of directors is clearly defined and disclosed.
- b. **Effectiveness of the Committee:** Whether the Committee has fulfilled its functions as assigned by the Board and laws as may be applicable
(For different Committees, different functions may be laid out as sub-criteria for evaluation)
- c. **Structure of the Committee and meetings:**
 - i. Whether the Committees have been structure properly and regular meetings are being held
 - ii. In terms of discussions, agenda, etc. of the meetings, similar criteria may be laid down as specified above for the entire Board
- d. **Independence of the Committee from the Board:** Whether adequate independence of the Committee is ensured from the Board
- e. **Contribution to decisions of the Board:** Whether the Committee's recommendations contribute effectively to decisions of the Board.

C. Individual Directors and Chairperson (including Chairperson, CEO, Independent Directors, Non-independent directors, etc.)

General

- a. **Qualifications:** Details of professional qualifications of the member
- b. **Experience:** Details of prior experience of the member, especially the experience relevant to the entity
- c. **Knowledge and Competency:**
 - i. How the person fares across different competencies as identified for effective functioning of the entity and the Board(*The entity may list various competencies and mark all directors against every such competency*)
 - ii. Whether the person has sufficient understanding and knowledge of the entity and the sector in which it operates



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- d. **Fulfillment of functions:** Whether the person understands and fulfills the functions to him/her as assigned by the Board and the law (E.g. Law imposes certain obligations on independent directors)
- e. **Ability to function as a team:** Whether the person is able to function as an effective team- member
- f. **Initiative:** Whether the person actively takes initiative with respect to various areas
- g. **Availability and attendance:** Whether the person is available for meetings of the Board and attends the meeting regularly and timely, without delay.
- h. **Commitment:** Whether the person is adequately committed to the Board and the entity
- i. **Contribution:** Whether the person contributed effectively to the entity and in the Board meetings
- j. **Integrity:** Whether the person demonstrates highest level of integrity (including conflict of interest disclosures, maintenance of confidentiality, etc.)

Additional criteria for Independent director:

- a. **Independence:** Whether person is independent from the entity and the other directors and there if no conflict of interest
- b. **Independent views and judgement:** Whether the person exercises his/ her own judgement and voices opinion freely

Additional criteria for Chairperson:

- a. **Effectiveness of leadership and ability to steer the meetings:** Whether the Chairperson displays efficient leadership, is open-minded, decisive, courteous, displays professionalism, able to coordinate the discussion, etc. and is overall able to steer the meeting effectively
- b. **Impartiality:** Whether the Chairperson is impartial in conducting discussions, seeking views and dealing with dissent, etc.
- c. **Commitment:** Whether the Chairperson is sufficiently committed to the Board and its meetings.
- d. **Ability to keep shareholders' interests in mind:** Whether the Chairperson is able to keep shareholders' interest in mind during discussions and decisions.

Different criteria may be assigned different weights depending on the organisation's requirements, circumstances, outcome of previous assessments, stage of Board's maturity, etc. Instead of the questionnaire in a simple yes/no format, it is desirable that it provides scope for grading, additional comments, suggestions, etc.

3. Method of evaluation:

As a global best practice, the method of evaluation is generally in 2 ways:

- a. Internal assessment
- b. Assessment by external experts



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Internal assessment:

Internal assessment of the Board is crucial. Who should evaluate whom is provided in the Companies Act and SEBI LODR as specified above.

The internal assessment may be done by following methods:

- a. A detailed Questionnaire to be circulated to individual directors, Committees, Board, etc.
- b. Oral assessments provided by the person on interviews

If deemed fit, the questionnaire may enable written answers to be submitted on a confidential basis. If due to various reasons, members are not willing to provide written inputs, the Chairperson or any other person may take initiative and obtain views of such members on a confidential basis.

Assessment by external experts:

Use of external experts imparts an independence to the evaluation process and therefore is used by many entities globally. However, care must be taken to ensure that the external assessor is not a related party or conflicted due to closeness of the Board to ensure impartiality.

Such external assessment may be done based on questionnaires/interviews or a combination of the two and done on a regular basis. Such external assessment complements the internal assessment and adds an objective aspect to the evaluation process.

Effective use of Information Technology through use of board evaluation software, applications, etc. can also play a facilitating role.

D. Feedback

Providing feedback to the individual directors, the Board and the Committees is crucial for success of Board Evaluation. On collation of all the responses, the feedback may be provided in one or more of the following ways:

- a. Orally given by Chairman/ external assessor or any other suitable person to
 - i. Each Member separately
 - ii. To the entire Board
 - iii. To the Committees
- b. A written assessment to every member, Board and Committee

The active role of the Chairperson is desirable in providing feedback to the members. If members are not comfortable to open individual assessments, provision for confidentiality may be made where possible. For effectiveness of the evaluation, it is essential that the feedback be given honestly and without bias.



E. Action Plan

Based on the analysis of the responses, the Board may prepare an action plan on:

- Areas of improvement including training, skill building, etc. as may be required for Board members
- List of actions required detailing:
 - Nature of actions
 - Timeline
 - Person responsible for implementation
 - Resources required, etc.
- Review of the actions within a specific time period

The action plan may be prepared by the Board in a comprehensive manner. Suggestions under the external assessment, individual member feedback, etc. may be taken into account while drafting the action plan.

F. Disclosure requirements

SEBI LODR and Companies Act requires disclosure of manner of formal annual evaluation of the Board, its committees and individual directors and of performance evaluation criteria for independent directors to the shareholders on an annual basis.

In addition, for more transparency, many entities worldwide voluntarily provide additional disclosures including the results of the Board evaluation, action taken on the basis of the evaluation, current status, etc. to various stakeholders.

G. Frequency of Board Evaluation

As per SEBI LODR and Companies Act, the Board Evaluation is required to be done once a year. The entity, if it so desires, may also conduct such evaluation more frequently. Since Board evaluation is a continuous process, it is felt that feedback provided to the members during meetings and otherwise, whether oral or written, is more effective for continuous improvement and ideally complements the annual evaluation process.

Many entities globally also complement the internal assessment with external assessment at regular intervals to impart objectivity to the process.

H. Responsibility

The responsibility of Board evaluation lies on different persons depending on the subject of evaluation as per Companies Act and SEBI LODR.

However, it is found that on a global basis, generally the primary role of steering the whole process of Board evaluation and of ensuring its effectiveness in improving the Board efficiency lies on the Chairperson. Therefore, to achieve maximum benefit of the process, the role and function of Chairperson in Board Evaluation needs to be laid out clearly in advance.



I. Review

Board evaluation is not a static process and requires periodical review for improvement. The responsibility of such review of the evaluation process lies with the Board of Directors in accordance with SEBI LODR.

Such review may involve the following:

- a. Whether objectives and criteria for evaluation are adequate or needs to be changed/ updated
- b. Whether the process/method of evaluation is appropriate for individual members, Committees and the Board
- c. Whether the actions based on the Board evaluation is being followed up on a timely basis
- d. Whether the Board evaluation has enhanced effectiveness of the Board
- e. Whether the review of the process is being done on a regular basis
- f. Whether feedback of the members to improve the process is being taken into account

Such review may be done based on feedback from management, Board members, Chairperson, external assessors, various stakeholders, etc.



Annexure A1

Main provisions under Companies Act with respect to Board Evaluation

Section 134(3)- There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

Section 178(2)- The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

SCHEDULE IV: CODE FOR INDEPENDENT DIRECTORS

II. Role and functions. (2) The independent directors shall bring an objective view in the evaluation of the performance of board and management;

V. Re-appointment: The re-appointment of independent director shall be on the basis of report of performance evaluation.

VII. Separate meetings:

(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;

(2) All the independent directors of the company shall strive to be present at such meeting;

(3) The meeting shall:

(a) review the performance of non-independent directors and the Board as a whole;

(b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;

(c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

(1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Rule 8 (4) of the Companies (Accounts) Rules, 2014

Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual



evaluation has been made by the Board of its own performance and that of its committees and individual directors.

Main provisions under SEBI LODR with respect to Board Evaluation

CHAPTER II:

4(2)(f)(ii): Key functions of the board of directors- (9) Monitoring and reviewing board of director's evaluation framework.

Chapter IV:

17(10): The performance evaluation of independent directors shall be done by the entire board of directors:

Provided that in the above evaluation the directors who are subject to evaluation shall not participate:

25: (3) The independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.

(4) The independent directors in the meeting referred in sub-regulation (3) shall, inter-alia-

- (a) review the performance of non-independent directors and the board of directors as a whole;
- (b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors;
- (c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

Schedule II (PART D) (A) ROLE OF NOMINATION AND REMUNERATION COMMITTEE:

Role of committee shall, inter-alia, include the following:

(2) formulation of criteria for evaluation of performance of independent directors and the board of directors;

(4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.

(5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

Schedule V: Corporate Governance Report. The following disclosures shall be made in the section on the corporate governance of the annual report.

(4) Nomination and Remuneration Committee:

(d) performance evaluation criteria for independent directors.